Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

CC Docket No. 96-128

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To: The Commission

AMERICAN PUBLIC COMMUNICATIONS COUNCIL'S OPPOSITION TO PETITIONS FOR RECONSIDERATION OF IXCs AND MESSAGING PROVIDERS

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SUMMARY

The interexchange carriers ("IXCs") and messaging providers ("MPs") complain loudly that they are being required to pay far more payphone compensation than they have in the past. Vis-a-vis independent payphone service providers ("PSPs"), however, the IXCs are not incurring any increase in the per-call compensation rate (reduced from 40 cents to 35 cents per call), but only in the total compensation per phone. That increase is occurring primarily because IXCs are finally being required to pay compensation on the subscriber 800 calls and intrastate access code calls on which they have, year after year, successfully postponed the application of requirements to compensate PSPs. There is no "windfall" for the PSPs: only the long-awaited application of an approximate market price to the origination from payphones of calls that IXCs are used to receiving for nothing.

The IXCs' claim that the Commission must apply a TSLRIC or TELRIC standard is entirely misplaced. The contexts of the payphone proceeding and of the local interconnection proceeding where TELRIC was applied are entirely different. In a market such as payphones, which the Commission has found to be highly competitive, the proper standard is a market-based standard, not a cost-based one. The IXCs' claims that the payphone market is somehow essentially monopolistic have no foundation. It is clear that market forces have potent effects on the payphone market and can be relied upon to keep local coin rates, and the associated dial-around compensation rates, at competitive levels. Further, the IXCs and MPs present no convincing reasons why any abusively high compensation rates cannot be effectively addressed through IXC blocking.

The cost analysis applied by the IXC and MP petitioners is not based in realism because it incorrectly assumes that coin capabilities of payphones play no role in making possible coinless dial-around calls. Without coin capabilities, the vast majority of payphones could not be successfully deployed. Therefore, it is clearly inappropriate to apply a cost method that excludeS all coin-capability related costs. Furthermore, the coinless cost analysis applied by AT&T, if corrected for certain obvious errors, yields a cost per call even higher than the 35 cents default rate prescribed by the Commission. The Commission's 35 cents rate is well within the range of reasonable cost estimates as well as being supported by evidence of market rates.

Further, the complaints of rate shock by IXCs fail to take into account the hundreds of million of dollars that IXCs will save when payphone costs are removed from interstate and intrastate access rates.

Concerns about administerability and "strategic pricing" by PSPs are exaggerated and can be fully addressed by carrier-PSP negotiations and market forces. If the Commission so decides, however, it could justify a locked-in 35 cents rate, indexed for inflation.

Regarding set use fees (and coin deposits), the Commission should adhere to its previous findings. IXCs should be allowed, but not required, to pass on compensation charges to their customers. The Commission may require the transmission of unique inforrmation digits by LECs, but should not allow LECs to force PSPs to subscribe to a particular class of service. It is not necessary or appropriate to alter the statute of limitations for compensation claims, or to shorten the one year deadline for initial presentation of such claims. IXCs can effectively track compensable calls by means of information digits in advance of claims, and market negotations will ensure that IXCs and their customers have sufficient information about compensation rates.

The Commission should exclude semi-public payphones from interim compensation, but should include international calls in the compensation plan. While some IXCs object to excluding small long distance carriers from interim compensation, they have made no showing that the call volume generated by such carriers is significant enough to make their inclusion cost-effective.

Finally, APCC recognizes that some state compensation programs may be preempted. However, others, such as set use fees for 0+ and 0- calls, are clearly outside the scope of the Commission's compensation plan and should remain. The compensation plan should not displace any private agreements between PSPs and carriers.

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AMERICAN PUBLIC COMMUNICATIONS COUNCIL'S OPPOSITION TO PETITIONS FOR RECONSIDERATION OF IXCs AND MESSAGING PROVIDERS

The American Public Communications Council ("APCC") hereby opposes the petitions filed by various interexchange carriers ("IXCs")[1] and messaging service providers[2] requesting reconsideration of the Report and Order ("Order") in this proceeding. APCC also endorses the Opposition of the New Jersey Payphone Association ("NJPA") to the petitions filed by state commissions and local exchange carriers ("LECs").

The IXCs' and messaging companies' attacks on the commission's market-based compensation regime are without merit. The Commission's compensation plan is

1 AT&T, Cable & Wireless, Comptel, LDDS Worldcom, MCI, and Sprint.

2 AirTouch Paging, Pagemart II, Inc., Paging Network, Inc. ("Pagenet") and the Personal Communications Industry Association ("PCIA").

described as "outlandishly excessive" (LDDS Worldcom at 1), a "windfall" for payphone service providers ("PSPs")(Comptel at 1), and a "billion dollar corporate welfare program" (Sprint at 8).[3]

To the extent that there is a reasoned position underlying these screams of outrage, the IXCs' argument rests fundamentally on the claim that a payphone is a "bottleneck" (MCI at 3), or that it is necessary to have "coin phones provided by multiple PSPs at a single premises" in order to assure a "market-based' competitive price for local coin calls" (AT&T at 12). There is absolutely no record basis for these claims, which are inconsistent with the Commission's findings that the payphone market is easy to enter and exit and that, once Bell subsidies and discrimination is removed, the payphone market will be fully competitive.

When this meritless legal claim is put to rest, what primarily remains is the complaint that IXCs will be required to pay a lot more payphone compensation, in total dollars,[4] than in the past. AT&T at 9; Comptel at 5. The IXCs complain that compensation of independent PSPs has gone from $6 per month to an interim rate of $46 per month. The reason for the increase is simple: for years, the IXCs have successfully

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3 To the extent that IXCs believe that compensation levels will produce large profits for PSPs, they are of course free to enter the payphone business themselves. Even though, as the Commission recognizes, entry barriers are low in the payphone market, IXCs other than AT&T are not substantial participants. (Sprint's participation is primarily in areas where it is the incumbent local exchange carrier ("LEC").) Even AT&T, which used to be the largest non-LEC PSP, has substantially reduced its involvement and seems to be exiting the market.

4 The IXCs will <u>not</u> be required to pay a higher compensation <u>rate</u> than what was prescribed in 1992. The Commission's 1992 prescription of $6.00 per payphone per month was based on a per-call rate of 40 cents. The <u>Order</u> <u>reduces</u> this rate to 35 cents.

avoided paying PSPs compensation on more than a fraction of the calls to which compensation should apply. First, the $6 per month, established more than four years ago, was never an appropriate measure of the total compensation due to PSPs from IXCs. As the court of appeals found, that amount erroneously excluded subscriber 800 calls. Florida Public Telecommunications Ass'n v. FCC, 54 F.3d 857 (D.C. Cir. 1995). Thus, the original compensation should have been two or three times the $6 per month fee. Second, the initial compensation order, which addressed only interstate access code calls, estimated the number of such calls at 15 per month. The record indicates that the number of access code calls, as well as subscriber 800 calls, has risen substantially since 1992. Third, the IXCs have not been paying any compensation in most states, for intrastate calls. Counting intrastate calls, access code calls now total some 45 calls per month -- triple the amount on which the 1992 compensation was based. Fourth, subscriber 800 calls, which, as mentioned above, were not included at all in the original $6 per month, account for at least double the volume of access code calls. APCC Reply Comments, Attachment 1.

Moreover, the IXCs have increasingly marketed their 800 services and access code platforms. Since the IXCs have been paying little or nothing for access code and subscriber 800 calls originating from payphones, it is little wonder that, during this period of free or virtually free access to payphones, the IXCs have been plastering the market with advertising that has effectively pumped up subscriber interest in making access code or other 800 number calls.[5] For example, MCI recently reported that its pre-paid card

[5] It is impossible today to walk through an airport without seeing numerous posters advertising 1-800-COLLECT or 1-800-CALLATT. Indeed, when was the last (Footnote continued)

revenues increased nearly 200% this year. Call volume for MCI's Personal 800 services increased nearly 50%, while 1-800-COLLECT call volume increased nearly 20%, and Collect En Espanol rose ore than 60%. MCI's Avantel joint venture recently launched a new branded collect calling service to "address the $500 million market for collect calling between [the United States and Mexico]. See Attachment 1.

There is irony here: The IXCs should have been paying compensation for subscriber 800 calls beginning more than four years ago. However, a windfall in the form of the Commission's misinterpretation of Section 226(e)(2) of the Act enabled the IXCs to continue paying nothing at all for this form of payphone access for four more years. Now that the IXCs have had ten full years of getting subscriber 800 calls from independent public payphones free of charge, they apparently have come to think of it as their right to receive benefits gratis from payphone service providers.

In summary, there is no "windfall" here for PSPs. Rather, the IXCs are simply beginning to pay compensation fees that they should have been paying all along, and that they would have been paying, were it not for government-mandated "unblocking" requirements that prevented (and will continue to prevent) PSPs from negotiating with IXCs a fully free market price for payphone access. By relying on market mechanisms and proxies, the FCC's Order arrives at a reasonable approximation of what a fully free market would provide. The IXCs' complaint, at bottom, is nothing more profound than that they

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(Footnote continued)
time anyone saw any detailed advertising or other information about any product that didn't provide an 800 number?

do not like the consequences of applying a market price to payphone access that they used to get for nothing.

I. THE CORRECT COMPENSATION METHODOLOGY IS MARKET BASED

There is no sound legal or public policy basis for the IXCs' attack on the Commission's market-based compensation methodology. First, the appropriate standard for payphone compensation is market-based, not cost-based. Second, even if a cost standard were appropriate, the TSLRIC concept proposed by the IXCs would not be the correct standard for the payphone context. Third, in any event, 35 cents is well within the zone of reasonableness established by analysis of the credible cost data that is in the record.

A. The Appropriate Standard Is Market Based, Not Cost Based

1. Payphones and Payphone Locations Are Not Bottleneck Local Exchange Facilities and PSPs Are Not Telecommunications Carriers

The IXCs and messaging providers[6] assert that the Commission must apply TSLRIC (or TELRIC) cost analysis, primarily because the Commission adopted that methodology in its recent Interconnection Order. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC 96-325, released August 8, 1996 ("Interconnection Order"), Order stayed in relevant

[6] "Messaging providers" includes paging companies, who increasingly provide an array of messaging and related services either in conjunction with, or as a part of their more traditional paging services.

part pending review, Iowa Utilities Board v. FCC, Case No. 96-3321 et al. (8th Cir., October 15, 1996). AT&T at 5-8; Comptel at 6-8; Pagenet at 6-8. But the rate-setting contexts of the two proceedings are totally different. In the interconnection proceeding the Commission developed a rate-setting methodology for a dominant local exchange carrier ("LEC") that controls the bottleneck facilities needed by its nascent competitors in the local exchange market. In its October 24 Application to the U.S. Supreme Court to vacate the Eighth Circuit stay, the Commission stated that in setting its pricing rules, "the Commission sought to ensure that the "enormous economies of scale" of "existing telephone networks" would "'be shared in a way that permits the incumbent LECs to maintain operating efficiency to further fair competition, and to enable the [new] entrants to share the economic benefits of that efficiency in the form of cost-based prices.'" Application at 9, quoting Order, ¶ 11. This concept is wholly inapplicable to setting PSP compensation.

In the payphone proceeding, the Commission has found that the payphone market is a competitive one in which there is ease of entry and exit. The Order finds no basis for concluding that PSPs control "bottlenecks" or that they are dominant carriers; indeed, PSPs are not even "telecommunications carriers" under the Act.[7] The Order does not address the price for emerging competitors to connect to a dominant carrier's

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[7] See 47 U.S.C. § 153(44); Interconnection Order, ¶ 876 (ruling that, because PSPs are "aggregators," they are not "carriers"). Thus, Pagenet is wrong on two counts when it states that, "[a]s telecommunications carriers, . . . the only appropriate methodology for determining the compensation [due to payphone providers] is TELRIC." Pagenet at 4 (emphasis added).

bottleneck facilities, but the price of access to competitively provided payphone equipment by carriers that have promoted "toll-free" use of this equipment by their customers while the suppliers of the equipment have been rendered legally powerless to prevent such use. In this utterly different context, market-based proxies are entirely appropriate and TSLRIC or TELRIC cost methodologies are simply inapplicable.[8]

The language of the Telecommunications Act of 1996 makes clear Congress's intent that ratesetting for local interconnection and for payphone compensation are two entirely different matters. Section 251 says interconnection shall be at "rates . . . that are just, reasonable . . ." 47 U.S.C. § 251(c). "Just" and "reasonable" are common carrier concepts that refer to "cost-based" rates. See also Section 252(d)(1)(A)(i), explicitly stating that rates under Section 251 should be "based on . . . cost." Section 276(b)(1)(B) uses none of these terms. Instead, the payphone provision simply requires that PSPs be "fairly compensated." 47 U.S.C. § 276(b)(1)(B).

For all these reasons, the TELRIC methodology of the Interconnection Order is not applicable to payphone compensation. It would be entirely inappropriate to take a form of cost-based regulation that was developed to ensure access to bottleneck facilities, essential in order to permit local service competition, and apply that same type of

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8 Pagenet compares the Interconnection Order's \$.002-\$.004 per minute default proxy rate for local switching with the \$.35 per call rate established in the Payphone Order, and concludes "There is something obviously wrong with this picture." Pagenet at 8. There is nothing wrong except Pagenet's disingenuous assumption that payphones and central office switches are comparable. Id., n. 11. A central office switch handles hundreds of thousands or millions of calls each day. A payphone averages about 20 calls per day. Carriers that build their business on access by payphones, as Pagenet apparently does, presumably are already aware of this elementary fact.

cost-based regulation to "micromanage" thousands of PSPs competing in a functioning payphone market.

Instead, the correct approach to the issue of payphone compensation is to use market-based proxies such as competitive local coin calling rates. Courts have approved the use of market proxies for rate-setting purposes. See, e.g., Amusement and Music Operators Association v. Copyright Royalty Tribunal, 676 F.2d 1144 (7th Cir. 1982) (upholding the Copyright Royalty Tribunal's decision to raise the compulsory license fee for jukeboxes from $8 per box to $50 per box, based on "marketplace analogies"). Even in the context of "just and reasonable" ratesetting for common carriers, courts have repeatedly endorsed comparable rate analogies as appropriate ratemaking devices. See, e.g., San Antonio v. United States, 631 F.2d 831, 836-37 (D.C. Cir. 1980), clarified, 655 F.2d 1341 (D. C. Cir. 1981); Burlington Northern, Inc. v. United States, 555 F.2d 637, 641-43 (8th Cir. 1977). In the payphone context, which is not subject to a "just and reasonable" carrier-oriented standard, and which the Commission has reasonably found to be workably competitive, the use of "marketplace analogies" such as those employed in the jukebox case is clearly more appropriate than an attempt to base compensation on the dynamic and difficult-to-assess cost factors characteristic of a highly competitive marketplace.

2. The Payphone Market Is Highly Responsive to Market Forces

The Commission's prescription of a market-based rate rests on the reasonable finding that, with the elimination of LEC subsidies and discrimination, as well as state-imposed ceilings on local coin rates, the rates charged at payphones will be adjusted in response to market forces until they reach a market equilibrium. The carriers challenge this approach primarily on the ground that, unlike virtually every other sector of the telecommunications industry, payphones are somehow immune to market forces. This facially improbable claim is without any significant foundation in the record of this proceeding.

Searching for some basis for their claim that rates will not respond to the market, the IXCs seize on the Commission's discussion of "locational monopolies." AT&T at 11-12; MCI at 11-13. This desperate attempt to avoid the consequences of a functioning payphone market is transparently fallacious. The Commission noted that certain payphone locations, such as airports and train stations, might be considered "locational monopolies" because callers from those locations might be viewed as essentially captive with no effective alternative means of communication. Whatever the merits of this suggestion regarding certain specific sites, it provides no basis for treating all payphone locations as "monopolies". Only the most distorted reasoning could label the typical payphone location such as a convenience store or fast-food restaurant as some kind of "monopoly". In the most prevalent types of payphone locations, it is obvious that the price of a local call is susceptible to numerous market influences, including (1) the ability of customers to use another nearby payphone, (2) the ability of customers to use mobile phones rather than payphones; and (3) the ability of customers to complain to the location owner or avoid patronizing a business that has unreasonably priced payphones. No location owner will tolerate losing a customer because payphones cost too much.

The IXCs also object that the five states are a skewed sample because they are all rural. However, they provide no contrary examples. Further, other states, such as Illinois and Michigan, which also has recently deregulated payphone service, appear to be reaching the same result as in four of the five states cited in the Order. APCC Reply Comments at 9, n. 7.

3. The IXCs Have Not Refuted the Commission's Finding That Their Ability to Block Calls Provides an Additional Market Check

IXCs also fail to provide any convincing argument why the market check of IXC blocking is not adequate to ensure that any substantial differences that might exist between the market rate for local coin calls and for other forms of payphone rate can be addressed through negotiations between carriers and PSPs. IXC contentions that they are currently unable to block subscriber 800 calls disregard the improvement in blocking capabilities that will result once IXCs are tracking those calls and are receiving unique ANI information digits for such calls. Since IXCs can and do pass ANI on to their 800 subscribers, it is a reasonable inference that either the IXC or the subscriber, or both, will have the capability to identify subscriber 800 calls from payphones, and would find it in their economic interest to block some or all such calls if the compensation rate demanded by the PSP is substantially in excess of a reasonable market rate.

The petitioners claim that any blocking threat could not be carried out because IXCs would never block their own customers' access to payphone users. Sprint at 10-11, n. 8. Pagenet at 22. To the extent that this is true, it can reasonably be inferred that carriers and 800 subscribers do indeed attach a substantial value to receiving such calls, and that the Commission's consideration of market factors is appropriate. However, the arguments do not withstand scrutiny. For example, Pagenet's argument that consumers would be confused by the use of "blocked" and "unblocked" 800 numbers assumes that consumers other than the messaging providers' own subscribers would have to be given blocked numbers. But Pagenet provides no reason to believe that non-subscribers trying to page a subscriber make substantial use of payphones. It is typically the messaging service subscriber that would be expected to use a payphone to retrieve messages in response to a page. The messaging subscriber could, if deemed necessary, be given "blocked" 800 numbers that would avoid incurring the payphone fee.[9]

B. The Cost Analysis Proposed By The IXCs And Messaging Companies Would Lead To Unreasonably High Local Coin Rates

The IXCs and messaging providers claim that the Commission must apply a cost methodology that allows no recovery of costs that are in any way attributable to the provision of a coin, as opposed to a coinless, payphone. See, e.g., AT&T at 6-8; Pagenet at 13-14. This approach fails to take account of the fundamental reality that, in the vast majority of locations, a payphone cannot be justified based on coinless (or coin) calls alone. Thus, in order to ensure that callers can be accessed from payphones, a coin payphone must be provided, and the costs associated with providing coin calling capability

[9] Pagenet's suggestion that PSPs be required to allow coin calling to 800 numbers from "blocked" payphones is not practical, for the simple reason that it is the IXC, not the PSP, that would be blocking the call.

cannot be isolated and treated as wholly unattributable to coinless calls. As APCC and the RBOCs pointed out, and as the cost studies submitted by Chuck Jackson and John Haring made clear, focusing on the costs of a particular call is a mistake; the appropriate focus is on the incremental cost of a payphone. The overwhelming number of payphones could not survive on access code and subscriber 800 calls alone.[10] Thus, any fair application of TSLRIC or similar cost methodologies would have to attribute a reasonable share of all fixed payphone costs, including fixed costs associated with coin calling capability,[11] to coinless as well as coin calls.

The IXCs and messaging providers also argue that there is no usage charge associated with access code and subscriber 800 calls. But unless these calls bear a share of overall costs, the market will push local coin calling rates even higher. The Commission can accommodate its market-based analysis to allow usage charges to be spread over all calls. The IXCs and messaging providers fail to address the issue of which calls should bear the burden of recovering the compensation that they urge the Commission to deny PSPs on dial-around calls.[12] The comments of PSPs such as Peoples Telephone and CCI showed

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10 Coinless payphones are a very small percent of total payphones and are suitable only for very high volume locations, such as airports.

11 The record does not establish that truly marginal costs of coin calls (i.e., those attributable to each additional coin call, as opposed to coin capability itself) are significant. As for coin collection costs, while these costs may be significant, APCC has presented evidence that dial-around compensation collection costs currently incurred by PSPs are also significant. Letter to William F. Caton, Secretary, FCC, from Albert H. Kramer, dated September 16, 1996 ("September 16 Ex Parte").

12 Sprint continues to claim that the record demonstrates that PSPs already earn revenues far in excess of costs. Sprint's use of available data and apples-and-oranges

(Footnote continued)

convincingly that the payphone business is not profitable based on current revenues. Especially in light of the Commission's pending proceedings to ensure reduced rates for 0+ calling, the financial data submitted by these PSPs showed that average compensation of at least 40 cents per call on coin and coinless calls was necessary in order for PSPs to become profitable. If PSPs are denied even 35 cents per call on dial-around calling, there is only one feasible means to recover the revenue shortfall. Local coin calling rates would have to increase beyond the estimated 35 cents market rate.

It is reasonable for the Commission to conclude that local coin callers should not be artificially burdened with such additional cost recovery, and that average costs should be spread across all categories of calls given the degree of similar, or "like," characteristics of the calls and the Commission's discretion.

C. The Commission's 35 Cents Is Within The Range Of Reasonable Cost Estimates

The IXCs and messaging providers' arguments essentially disregard that there is a solid cost as well as market basis for the Commission's prescription of a 35-cent default rate for dial-around calls. As discussed above, the largest PSP showed that its revenue requirements to earn a reasonable rate of return, assuming a 35-cent coin rate, were well in excess of 40 cents per call. Comments of Peoples, Table 4. Moreover, even the Bell companies, who have a strong incentive to minimize their payphone costs in order to

(Footnote continued)
comparisons was utterly discredited by Peoples and CCI in an earlier submission. See Letter to William F. Caton, Secretary, FCC, from Robert F. Aldrich, dated September 11, 1996.

minimize the amounts removed from their regulated revenue requirements, estimated costs of 25-32 cents per call. Comments of RBOC Coalition, Appx., "Calculation of Per-Call Compensation," at 10.

Furthermore, even AT&T's estimate of "TSLRIC" supports a number in the range of what the Commission prescribed, once AT&T's calculations are corrected for a few obvious errors. Based on costs that it attributed to the operation of non-coin payphones, AT&T estimated costs of 6-11 cents per call. AT&T Petition at 7, citing AT&T Reply at 8-9. However, this estimate excluded such obviously relevant costs as local exchange service,[13] collection costs,[14] and commission costs.[15] Including 6-7 cents per call (AT&T at 7-8, n. 7) for line charges immediately increases the cost of 12-18 cents per call. Adding 25% for commissions brings this total to 15-22.5 cents per calls, and adding 20%

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13 There is absolutely no rationale basis for AT&T's exclusion of a fair share of local exchange line charges. See APCC Reply comments at 31-32.

14 See APCC's September 16 Ex Parte estimating current collection costs and shortfalls of roughly 25%.

15 Similarly, commissions are properly included as a percentage of any charge, including dial-around charges, that results in revenue in which location owners logically would expect to share. While AT&T argues that commissions should not be included because it will result in undesirable increases in commission payments, AT&T has always argued that commissions may be included as cost support for AT&T's long distance rates, and the FCC has agreed. Further, the payment of commissions to location owners will not necessarily result in higher commissions to location owners. Equally likely is that those commission payments will simply be redistributed from other services. This is particularly likely since the Commission is currently considering measures that are likely to substantially reduce revenues from 0+ charges, on which a substantial percentage of current location commissions are paid. Finally, even if commission payments did increase, this is not inherently undesirable. The record of this proceeding reflects that total deployment of payphones has remained stagnant in recent years. Increased commissions will tend to persuade location owners to allow the placement of additional payphones and will result in "widespread deployment of payphone services" as intended by the Act.

collection costs brings the total to 18-27 cents per call. In addition, AT&T appears to have omitted a reasonable return on investment. When a 1 cent return is included, AT&T's costs reach 19-28 cents per call. However, AT&T's analysis contains one other major flaw. AT&T assumes a call volume of 500-700 calls per month. Four or five hundred of these calls are coin calls. When the estimates are corrected to reflect the average volume of 200 coinless calls per month reflected in the record,[16] the AT&T coinless payphone cost per call increases to 65-70 cents per call. And these estimates relate to assumedly lower-cost coinless payphones.

The Commission's prescribed default rate of 35 cents per call falls well within the "zone of reasonableness" established by these varying analyses.

D. Payphone Compensation Will Not Unduly Dislocate The Long Distance Market

The other arguments of IXCs and messaging companies against the Commission's default rate boil down to the complaint that the 35 cents per-call rate will cause "rate shock" to the IXCs and/or 800 service subscribers. AT&T complains that a 35 cents surcharge per call would increase call charges for access code callers by 11.5%. In fact, AT&T is already paying IPP providers 25 cents per access code call.

With respect to subscriber 800 calls, AT&T argues that a $.35 per-call surcharge would "nearly double" subscriber charges on 800 calls from payphones.

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[16] APCC Reply Comments, Attachment 2 (this is independent PSP data only -- RBOC estimates are presumably lower).

The arguments of IXCs disregard the fact that IXCs are simultaneously going to realize major savings in interstate CCL charges. The "lost" RBOC revenues were conservatively estimated by the RBOCs at $208 million for interstate CCL savings from the RBOCs on payphone equipment alone.[17] When the end user common line ("EUCL") components are also included, as well as cost savings attributable to non-RBOC LECs, the interstate cost savings would be much higher, probably in the neighborhood of $350 million at a minimum. When intrastate savings are also included, the probable savings to long distance carriers and customers are likely to be at least twice as large.

Thus, to a large extent the impact on the long distance market is a redistributive one. Costs are being increased for 800 subscribers, who have had a long free ride at payphones, while being decreased for other long distance customers, who have had to foot the bill for LEC payphone costs.

The IXCs are well able and motivated to minimize any undue rate shock on their customers by transitioning the redistribution of costs, if necessary, over a period of years.

II. ADMINISTERABILITY, STRATEGIC PRICING

Various IXCs object that the Commission's plan for the default rate of per-call compensation to track changes in the local coin rate at each payphone will be unadministerable. These objections, however, assume that the default rate is an absolute rate that cannot be altered by negotiations between PSPs and IXCs. The Order specifically contemplates that such negotiations would occur because both parties have an interest in

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17 AT&T apparently accepts this estimate as a lower bound. See Letter to William F. Caton, from R. Gerard Salemme, dated October 16, 1996, Attachment 1.

making the compensation system a manageable one. The IXCs provide no reason to believe that such negotiations would not be successful in establishing uniform rates, at a minimum, for each of a PSP's payphones. Further, just as the rate for a local coin call, in deregulated states like Iowa, has been influenced by market forces to minimize deviations from a "consensus" 35 cents level, it is also reasonable to expect that, as a result of actions by individual "market leaders" such as the largest carriers and PSPs, there would develop in the dial-around market a "market rate" from which deviations would be relatively few even though individual PSPs and carriers may choose a different rate.

IXCs also argue that the Commission's plan for a "floating" default compensation rate that tracks the local calling rate at each payphone will encourage "strategic pricing" by PSPs. The argument is that a PSP could try to maximize profits by increasing local coin rates above the market level, and tolerating the resulting suppression of demand in return for increased revenue from dial-around calls subject to automatic rate increases.

The difficulty with this argument is that PSPs do not set rates in a vacuum. They are subject to a variety of forces in the marketplace, including pressure from location providers who must deal with complaints when their patrons become angry with the condition, quality of service, or rates provided at a payphone. To the extent that PSPs attempt to charge exorbitant coin rates, the market will discipline them, not only in the form of suppression of demand, but also in the form of location provider threats to remove payphones unless the complaints stop. Therefore, it is not plausible that PSPs will be able or willing consistently to raise coin rates above the levels tolerated by the market, merely to increase their revenues on a substantially smaller number of dial-around calls.

Moreover, under the Commission's Order, IXCs that believe a PSP's dial-around rate is too high, even though it matches the PSP's local coin rate, always have the option of blocking subscriber 800 calls from that PSP's payphones. This additional safeguard provides additional insurance against PSPs abusing the marketplace through "strategic pricing."

Nevertheless, in the event the Commission is persuaded that there is a legitimate problem that must be addressed with respect to the plan for a "floating" compensation rate, APCC believes there is a relatively simple solution. The Commission could elect to "lock in" the compensation rate at the 35 cents level, indexed to ensure that it keeps up with changes in the consumer price index. This alternative also would be reasonable and supported by the record, including information from a variety of sources regarding both market prices and costs. See above.

III. THE IXCS' OTHER OBJECTIONS ARE EITHER INVALID OR ARE EASILY ADDRESSED

The other objections raised by IXCs and messaging companies are mostly invalid. For example, a number of IXCs argue that the Commission should reconsider and choose the "set use fee" option, so that compensation can be passed on to the cost causers.[18] See, e.g., AT&T at 18-20. APCC has no objection to IXCs passing on their compensation costs, and they are free to do so under the Commission's Order. The arguments of Pagenet that IXCs should be prohibited from passing on compensation costs to subscribers are without credible foundation and should be rejected.

IXCs also argue that they cannot effectively track calls placed to resellers' access codes because they will not be able to tell if such calls are completed to the ultimate destination. This argument is not persuasive. IXCs contracts with resellers routinely require resellers to report a variety of information, including calling data such as percentage of interstate use (PIU). There is no legitimate reason why IXCs cannot also require reporting of completion percentages from their reseller customers.

A number of IXCs request that PSPs be required to transmit information digits with their calls, and that LECs be required to transmit unique information digits to distinguish PSPs from other entities not entitled to compensation. APCC does not object to such requirements. Indeed, we have long supported the provision of a unique ANI identifier for "smart" payphones. However, the Commission should deny the request of some IXCs (and LECs) that PSPs be forced to subscribe to certain classes of exchange service (e.g., "COCOT" lines). In some jurisdictions, "COCOT" service or the equivalent

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18 Some petitioners continue to urge adoption of a coin-deposit system of compensation. This approach was properly rejected by the Commission. First, it is clearly disfavored by Congress. Second, PSPs have no way to distinguish which 800 calls are made using access codes, for which collection of coins is prohibited by Section 226, unless the same amount is also collected on every 0+ call. Third, it is reasonable to conclude that callers should still have a convenient means to place calls from payphones when they have no coins to deposit.

may be unavailable. In others, PSPs are able to choose to subscribe to regular business service and are not forced to subscribe to a special class of service that is often high-priced or bundled with unnecessary features. In addition, as local competition increases, the distinction between "COCOT" service and other classes of service that support payphones will be increasingly blurred. As long as an appropriate ANI identifier is transmitted, it should not matter for purposes of compensation to what class of service the PSP subscribes.[19]

MCI requests a reconsideration ruling from the Commission that the statute of limitations begins running as soon as a PSP becomes eligible for compensation. MCI is wrong. The Commission should adhere to its ruling in the Order that the statute of limitations does not begin running until a carrier issues a final denial of a compensation claim. Otherwise, carriers would have an incentive to hold up processing of compensation claims indefinitely. Furthermore, since the carrier is the party responsible for tracking the call, a PSP has no way to know whether it has a basis for seeking legal relief until it has been informed by the carrier how much compensation is payable on each of the PSP's payphones.

MCI also requests that the Commission reconsider its ruling that a PSP can identify itself and request compensation from a carrier any time within a year after the close of the compensation period. This one year period is reasonable and will not adversely affect any legitimate interest. To the extent that carriers need advance information about the

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19 Requiring a subscription to COCOT service does not advance prevention of PSP fraud. A person that wishes to collect compensation by passing himself off as a PSP could as easily subscribe to COCOT service as to other LEC services.